

JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

Ade ECF

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Terrell Brown

DEFENDANTS

Collecto Inc. d/b/a EOS CCA

(b) County of Residence of First Listed Plaintiff Alameda, CA
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Norwell, MA
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South, Suite 301
San Diego, CA 92108

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury— Med. Malpractice	<input type="checkbox"/> 422 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 440 Deportation
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Product Liability		<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 12 USC 3410
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	99
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1955f)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 511 Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/ Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/ Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes
FEDERAL TAX SUITS	IMMIGRATION			
	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

(Place an "X" in One Box Only)

- | | | | | |
|--|---|--|---|------------------|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | Transferred from |
|--|---|--|---|------------------|

 5 another district (specify) 6 Multidistrict Litigation 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1 et seq (FDCPA)

Brief description of cause:

Unfair Debt Collection Practices

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$ 75,001.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

ORIGINAL

E-filing

1 Joshua B. Swigart, Esq. (SBN: 225557)
 2 josh@westcoastlitigation.com
 3 David J. McGlothlin, Esq. (SBN: 253265)
 4 david@westcoastlitigation.com
Hyde & Swigart
 5 411 Camino Del Rio South, Suite 301
 6 San Diego, CA 92108
 7 (619) 233-7770
 8 (619) 297-1022

9
 10 Attorneys for Plaintiff
 11 Terrell Brown

FILED
 JUN - 9 2011
 RD W. WIEKING
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND
 FEE PAID
 (99)
 ADR

12
 13
UNITED STATES DISTRICT COURT
 14
NORTHERN DISTRICT OF CALIFORNIA

15 16 17 18 19	Terrell Brown v. Collecto Inc. d/b/a EOS CCA 20	Case No: <u>C11-02816</u> CS Complaint For Damages Jury Trial Demanded
----------------------------	--	--

21
INTRODUCTION

- 22 1. The United States Congress has found abundant evidence of the use of
 23 abusive, deceptive, and unfair debt collection practices by many debt
 24 collectors, and has determined that abusive debt collection practices
 25 contribute to the number of personal bankruptcies, to marital instability, to the
 26 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
 27 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
 28 “FDCPA”), to eliminate abusive debt collection practices by debt collectors,
 to insure that those debt collectors who refrain from using abusive debt

HYDE & SWIGART
 Phoenix, Arizona

ORIGINAL

- 1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.
- 3 2. The United States Congress has also found the banking system is dependent
4 upon fair and accurate credit reporting. Inaccurate credit reports directly
5 impair the efficiency of the banking system, and unfair credit reporting
6 methods undermine the public confidence which is essential to the continued
7 functioning of the banking system. Congress enacted the Fair Credit
8 Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to insure fair and accurate
9 reporting, promote efficiency in the banking system, and protect consumer
10 privacy. The FCRA seeks that consumer reporting agencies exercise their
11 grave responsibilities with fairness, impartiality, and a respect for the
12 consumer’s right to privacy because consumer reporting agencies have
13 assumed such a vital role in assembling and evaluating consumer credit and
14 other information on consumers. The FCRA also imposes duties on the
15 sources that provide credit information to credit reporting agencies, called
16 “furnishers.”
- 17 3. The California legislature has determined that the banking and credit system
18 and grantors of credit to consumers are dependent upon the collection of just
19 and owing debts and that unfair or deceptive collection practices undermine
20 the public confidence that is essential to the continued functioning of the
21 banking and credit system and sound extensions of credit to consumers. The
22 Legislature has further determined that there is a need to ensure that debt
23 collectors exercise this responsibility with fairness, honesty and due regard
24 for the debtor’s rights and that debt collectors must be prohibited from
25 engaging in unfair or deceptive acts or practices.
- 26 4. Terrell Brown, (Plaintiff), through Plaintiff’s attorneys, brings this action to
27 challenge the actions of Collecto Inc. d/b/a EOS CCA, (“Defendant”), with
28 regard to attempts by Defendant to unlawfully and abusively collect a debt

1 allegedly owed by Plaintiff, erroneous reports of derogatory and negative
2 credit information made by Defendant to national reporting agencies, and for
3 failure of Defendant to properly investigate, and this conduct caused Plaintiff
4 damages.

- 5 5. Plaintiff makes these allegations on information and belief, with the exception
6 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
7 Plaintiff alleges on personal knowledge.
- 8 6. While many violations are described below with specificity, this Complaint
9 alleges violations of the statutes cited in their entirety.
- 10 7. Unless otherwise stated, all the conduct engaged in by Defendant took place
11 in California.
- 12 8. Any violations by Defendant were knowing, willful, and intentional, and
13 Defendant did not maintain procedures reasonably adapted to avoid any such
14 violation.

15 **JURISDICTION AND VENUE**

- 16 9. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
17 1692(k), and 28 U.S.C. § 1337 for supplemental state claims.
- 18 10. This action arises out of Defendant's violations of the Fair Credit Reporting
19 Act, 15 U.S.C. §§ 1681 *et seq.* ("FCRA"), the Fair Debt Collection Practices
20 Act, 15 U.S.C. §§ 1692 *et seq.* ("FDCPA") and the Rosenthal Fair Debt
21 Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal
22 Act").
- 23 11. Because Defendant does business within the State of California, personal
24 jurisdiction is established.
- 25 12. Venue is proper pursuant to 28 U.S.C. § 1331.
- 26 13. At all times relevant, Defendant conducted business within the State of
27 California.

PARTIES

14. Plaintiff is a natural person who resides in the City of Oakland, State of California.
 15. Defendant is located in the City of Norwell, in the State of Massachusetts.
 16. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
 17. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).
 18. Plaintiffs are informed and believe, and thereon allege that Defendant is a furnisher of information as contemplated by 15 U.S.C. 1681s-2(b), that regularly and in the ordinary course of business furnishes information to a consumer credit reporting agency.
 19. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).
 20. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).
 21. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

22. Sometime before June 10, 2010, Plaintiff is alleged to have incurred certain financial obligations.
 23. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).
 24. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).
 25. Sometime thereafter, but before June 10, 2010, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt.
 26. Plaintiff currently disputes the validity of this alleged debt as the alleged debt was settled with a previous debt collector.
 27. Subsequently, but before June 10, 2010, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
 28. On or about June 2010, Plaintiff discovered that Defendant was reporting a debt on Plaintiff’s credit reports, on a debt that Plaintiff had previously paid.
 29. Plaintiff then began communicating with Defendant in order to correct this mistake.
 30. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).
 31. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).

- 1 32. Plaintiff is informed and believes, and thereon alleges, that Plaintiff's
2 creditworthiness has been repeatedly compromised by the acts and omissions
3 of the Defendant.
- 4 33. On or about June 2010 Plaintiff disputed the account pursuant to 15 U.S.C. §
5 1681i(a)(2) by notifying the credit reporting agencies that the debt in question
6 had previously been paid. Plaintiff also provided documentation establishing
7 this fact.
- 8 34. Subsequently Plaintiff received notification from the credit reporting agencies
9 that Defendant received notice of Plaintiff's dispute pursuant to 15 U.S.C. §
10 1681i(a)(6), and verified the account as being reported accurately on
11 Plaintiff's credit report.
- 12 35. Through this conduct, Defendant communicated or threatened to
13 communicate to a person credit information which was known or which
14 should have been known to be false. Consequently, Defendant violated 15
15 U.S.C. § 1692e(8). Because this violated certain portions of the federal Fair
16 Debt Collection Practices Act as these portions are incorporated by reference
17 in the Rosenthal Fair Debt Collection Practices Act, through California Civil
18 Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.
- 19 36. Plaintiff believes that Defendant, upon receiving notice of their alleged
20 dispute, failed to conduct an investigation with respect to the disputed
21 information as required by 15 U.S.C. § 1681s-2(b)(1)(A).
- 22 37. Plaintiff further believes that Defendant failed to review all relevant
23 information provided by Plaintiff's in their dispute to the credit reporting
24 agencies as required by and in violation of 15 U.S.C. § 1681s-2(b)(1)(B).
- 25 38. Due to Defendant's failure to investigate, Defendant further failed to correct
26 and update Plaintiff's information as required by 15 U.S.C. § 1681s-2(b)(1)
27 (E), thereby causing Defendant to report inaccurate information to the
28

1 pertinent credit reporting agencies in violation of 15 U.S.C. § 1681-s(2)(b)(1)
2 (C).

- 3 39. Plaintiff's continued efforts to correct Defendant's erroneous and negative
4 reporting of the alleged debt by continued communications and disputes with
5 Defendant and the pertinent CRA's was fruitless.
- 6 40. Defendant's continued inaccurate and negative reporting of the alleged debt in
7 light of its knowledge of the actual error was willful.
- 8 41. Defendant's inaccurate and negative reporting damaged Plaintiffs's
9 creditworthiness.
- 10 42. By inaccurately reporting the alleged debt after notice and confirmation of its
11 errors, Defendant failed to take the appropriate measures as determined in 15
12 U.S.C. §§ 1681-s(2)(b)(1)(D) and (E).
- 13 43. Through this conduct, Defendant was collecting an amount (including any
14 interest, fee, charge, or expense incidental to the principal obligation) when
15 such amount was not expressly authorized by the agreement creating the debt
16 or permitted by law. Consequently, Defendant violated 15 U.S.C. § 1692f(1).
- 17 44. Because this violated certain portions of the federal Fair Debt Collection
18 Practices Act as these portions are incorporated by reference in the Rosenthal
19 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
20 this conduct or omission violated Cal. Civ. Code § 1788.17.

21 **CAUSES OF ACTION**

22 **COUNT I**

23 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

24 **15 U.S.C. §§ 1692 ET SEQ.**

- 25 45. Plaintiff repeats, re-alleges, and incorporates by reference, all other
26 paragraphs.

46. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

47. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

48. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

49. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

50. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

COUNT III

FAIR CREDIT REPORTING ACT (FCRA)

15 U.S.C. §§ 1681 ET SEQ.

51. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

52. The foregoing acts and omissions constitute numerous and multiple willful, reckless or negligent violations of the FCRA, including but not limited to

1 each and every one of the above-cited provisions of the FCRA, 15 U.S.C §
2 1681.

3 53. As a result of each and every violation of the FCRA, Plaintiff is entitled to
4 any actual damages sustained, statutory damages, punitive damages, and
5 reasonable attorney's fees and costs from Defendant.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
8 Plaintiff be awarded damages from Defendant, as follows:

- 9 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
10 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
11 1692k(a)(2)(A);
12 • An award of costs of litigation and reasonable attorney's fees, pursuant
13 to 15 U.S.C. § 1692k(a)(3);
14 • An award of actual damages pursuant to California Civil Code §
15 1788.30(a);
16 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
17 § 1788.30(b);
18 • An award of costs of litigation and reasonable attorney's fees, pursuant
19 to Cal. Civ. Code § 1788.30(c).

20 54. Pursuant to the seventh amendment to the Constitution of the United States of
21 America, Plaintiff is entitled to, and demands, a trial by jury.

22
23 Respectfully submitted,

24 **Hyde & Swigart**

25 Date: 6/10/11

26 By: _____
27 Joshua B. Swigart
28 Attorneys for Plaintiff